

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 5/29/08



STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

(212) 416-6295

So ordered

LESLIE G. LEACH
Executive Deputy Attorney General
Division of State Counsel

5/28/08 *for 6/6/08*
May 28, 2008 *d.s.d.*

JUNE DUFFY
Assistant Attorney General in Charge
Litigation Bureau

BY HAND

Honorable John G. Koeltl
United States District Judge
United States Courthouse
Southern District of New York
500 Pearl Street, Rm. 1030
New York, New York 10007

MAY 28 2008

Re: Samuel Davis v. Rhoomes, et al. / 07 Cv. 6592 (JGK)

Dear Judge Koeltl:

I represent the defendants in this matter. Please be advised that a motion to dismiss the complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure was served on plaintiff today and filed with the Court. As per your Honor's rules, one courtesy copy of the fully briefed motion will be submitted to Chambers when the motion is fully briefed. Defendants have also filed an Answer with respect to plaintiff's claim against defendant Rhoomes for the alleged filing of a false misbehavior report on March 30, 2007, in retaliation for plaintiff's March 26, 2007 grievance against defendant Rhoomes.

A briefing schedule was set forth in defendants' notice of motion based on incarcerated plaintiff's pro se status and the number of grounds for dismissal defendants have raised in their moving papers: plaintiff's opposition papers will be served by June 20, 2008 and defendants' reply by July 11, 2008. It is respectfully requested that the briefing schedule be endorsed and adopted by this Court.

Defendants moved to dismiss on the following grounds: (1) the majority of plaintiff's claims must be dismissed based on plaintiff's failure to exhaust administrative remedies; (2) plaintiff fails to state a retaliation claim against defendants Andino and Faliski, Jones, Kornies, Jacobsen and Niles; (3) plaintiff fails to allege the personal involvement of defendants Van Buren, Jones, Andino, Degnan and Faliski in any constitutional violation; (4) plaintiff fails to state a due process claim against defendants Jacobsen and Niles; (5) plaintiff cannot maintain a claim for deprivation of property; (6) plaintiff's claims of verbal abuse, harassment and threats against defendants Rhoomes

Honorable John G. Koeltl
Davis v. Rhoomes, et al. / 07 Civ. 6592 (JGK)

2

and Faliski do not rise to the level of a constitutional violation; (7) plaintiff fails to state an Eighth Amendment harassment claim; (8) plaintiff fails to state a claim of retaliatory transfer; (9) plaintiff fails to state a claim for the violation of his right of access to the courts; (10) defendant fails to state a conspiracy claim and (11) defendants Van Buren, Kornies, Jacobsen and Niles are entitled to qualified immunity.

Pursuant to the Court's order dated March 7, 2008, discovery in this case was stayed pending a decision on any motion to dismiss filed by defendants. Although defendants answered the second amended complaint with respect to one claim against defendant Rhoomes, defendants have moved to dismiss all remaining claims. Due to the dispositive nature of defendants' motion, defendants respectfully request that all discovery in this action continued to be stayed, pending a decision on defendants' motion. This will allow the parties to begin all discovery required in this case at the same time. As directed in the Court's March 7, 2008 order, defendants will continue to assure that all documents, photos or evidence are maintained pending a decision on defendants' motion to dismiss.

Wherefore, it is respectfully requested that defendants' proposed briefing schedule be endorsed and adopted by the Court and that discovery in this action continue to be stayed pending a decision on defendants' motion to dismiss the second amended complaint.

Respectfully submitted,


MARIA BAROUS HARTOFILIS
Assistant Attorney General

cc: Samuel Davis
Plaintiff - Pro Se
By first class mail